IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8177 of 2001

with

CIVIL APPLICATION No 12982 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

SURAT (HAZIRA) KAMDAR KARMACHARI UNION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8177 of 2001

MR PC MASTER for Petitioner No. 1

MR PREMAL JOSHI AGP for Respondent No. 1-3

MR RD DAVE for Respondent No. 4

MR KS NANAVATI for NANAAVATI ASSOCIATES for Respondent No. 5

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/04/2002

ORAL JUDGEMENT

1. The learned counsel for the petitioner fairly conceded that most of the demands for the reference of which the petition was filed have, by now, been referred by an order dated 20.3.2002, a copy of which has been placed on record by the learned Assistant Government Pleader Mr.Premal Joshi. Learned counsel Mr.Master, however, also pointed out that some of the demands were not referred in the order of reference and the petitioner may have to challenge that part of the order of reference after approaching the appropriate authority to make suitable amendment. Needless to state that such supposed grievances arising now from the order of reference are not the subject-matter of this petition. The main prayer admittedly does not survive in view of the above-referred order of reference to the Industrial Tribunal and, therefore, the petition has, for all practical purposes, become infructuous. However, the learned counsel Mr.Master vehemently argued that the workmen concerned represented by the petitioner have, since the grant of ad-interim relief in this matter, enjoyed the protection in terms of Para 21 (A) of the petition and the same was required to be extended till the petitioner can file an application for similar protection in the Industrial Tribunal to which the dispute is referred.

2. It has to be noted that, on the record of the petition, there is no prayer for a relief which could extend beyond the pendency of the petition and only an oral prayer under apprehension is made while conceding that the petition is not surviving. In such circumstances, where a petition is either being withdrawn or dismissed or not surviving, ordinarily, it would not be proper to grant any interim relief except where a party proposes to move a higher forum. Recently, a Division Bench of this Court has, also, after placing reliance upon the judgment of the Apex Court in SHIV SHANKAR v. BOARD OF DIRECTORS, U.P.STATE ROAD TRANSPORT CORPORATION [(1995) Supp. 2 SCC 726], taken the view that Court should not pass any interim order or should not continue the interim relief after dismissal of a writ petition filed under Article 226 of the Constitution. In the facts of the present case, it can also not be gainsaid that, immediately on the reference of the dispute, the workmen concerned enjoy such protection as is prescribed in the Industrial Disputes Act.

3. After the above discussion, the learned counsel sought permission to withdraw the petition with a view to approach the Industrial Tribunal as and when occasion for that arises. Accordingly, the petition stands disposed as withdrawn. Rule is discharged with no order as to costs. Interim relief stands vacated. The Civil Application also stands disposed.

Sd/-

(D.H.Waghela,J.)

10.4.2002

(KMG Thilake)